

Application No. 10/608,257  
Office action dated June 8, 2007  
Response dated October 9, 2007

### **REMARKS**

After entry of this amendment, claims 1, 3-18, and 20 will be pending. Claims 3, 4, 10, and 13 stand withdrawn from consideration. Claims 1 and 8 are amended herein. Claim 20 is added. Support for the amendments and new claim can be found, *inter alia*, at paragraph [0057] of the application as filed. No new matter is introduced.

Applicants have thoroughly reviewed the Office action, including the Examiner's remarks and the references cited therein. Applicants submit that the following remarks are fully responsive to the Office action, and that all pending claims are patentable over the cited references.

### **Rejections Under 35 U.S.C. § 102(b)**

#### **Claims 8 and 9**

The Examiner rejects claims 8 and 9 under 35 U.S.C. § 102(b) as anticipated by United States patent no. 6,080,151 to Swartz et al. ("Swartz"). To be anticipatory, a single prior art reference must explicitly or inherently teach each and every element of the claimed invention. MPEP § 2131 (citing Verdegeal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987)). Applicants respectfully submit that Swartz does not meet this standard.

The Examiner submits that claim 8 "do[es] not point out what specific asymmetry is provided on the catheter device." Office action at p.2. As amended herein, claim 8 recites that the "distal portion has a cross-sectional configuration having an *outer periphery* that is asymmetric about at least one plane containing said longitudinal axis of said active region." Claim 8 (emphasis added). Swartz, on the other hand, generally teaches an ablation catheter having a cross-section with a circular outer periphery. E.g., Swartz, Figs. 4 and 5. Applicants submit that a circular outer periphery is not "asymmetric about at least one plane containing" a longitudinal axis of the catheter, and that Swartz therefore does not anticipate claim 8. Claim 9 depends from claim 8 and is allowable for at least the same reasons.

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Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 8 and 9 under 35 U.S.C. § 102(b).

Claims 1, 5, 6, 8, 9, 11, 12, and 15

The Examiner rejects claims 1, 5, 6, 8, 9, 11, 12, and 15 under 35 U.S.C. § 102(e) as anticipated by United States patent no. 6,620,155 to Underwood et al. ("Underwood"). Applicants respectfully traverse.

As amended herein, claim 1 recites "a fluid lumen including at least one porthole located in the distal portion; and a porous material disposed within the fluid lumen covering the at least one porthole, the porous material having a pore size configured to achieve a desired flow rate for a fluid flowing through the at least one porthole." Claim 8 similarly recites a catheter that includes a "lumen including at least one porthole; [and] a porous material disposed within the lumen covering the at least one porthole, a pore size of the porous material configured to restrict a flow rate of a fluid through the at least one porthole . . . ."

As described in the specification, the flow rate of a fluid medium flowing through the lumen of the catheter is "managed or regulated so that there is sufficient flow to prevent vaporization, but not so much flow that the gap between the catheter and the tissue opens . . . ." Specification, Para. [0056]. In some embodiments of the invention, "the size of the gaps or pores may be adjusted when trying to establish a satisfactory flow rate through the distal portion of the ablation catheter." *Id.*, Para. [0057].

Applicants respectfully submit that Underwood does not teach or even suggest a porous material, disposed within a fluid lumen and covering at least one porthole of the fluid lumen, wherein the porous material has a pore size configured to regulate a flow rate of a fluid through the at least one porthole. Accordingly, Applicants submit that Underwood cannot anticipate amended claims 1 and 8. Claims 5 and 6, which depend from claim 1, and claims 9, 11, 12, and 15, which depend from claim 8, are allowable for at least the same reasons as the claims from which they depend are allowable.

Applicants therefore respectfully request reconsideration and withdrawal of the section 102 rejection of claims 1, 5, 6, 8, 9, 11, 12, and 15 over Underwood.

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### **Rejection Under 35 U.S.C. § 103**

The Examiner rejects claims 7, 16, and 17 under 35 U.S.C. § 103 as obvious over Underwood. To establish a *prima facie* case of obviousness, the Examiner must demonstrate some suggestion or motivation to combine one or more references, with a reasonable expectation of success, to teach or suggest each and every claimed limitation. MPEP § 2142. Applicants respectfully contend that the cited reference does not teach or suggest each and every element of the claimed invention.

Claim 7 depends from claim 1, while claims 16 and 17 depend from claim 8. The shortcomings of Underwood with respect to claims 1 and 8 are discussed at length above. Accordingly, Underwood cannot teach or suggest each and every element of claims 7, 16, and 17. Claims 7, 16, and 17 are allowable for at least the same reasons as the claims from which they depend are allowable. The rejection under 35 U.S.C. § 103 should be withdrawn.

### **Double Patenting Rejection**

The Examiner rejects claims 1, 5-9, 11, 12, and 14-18 on the grounds of nonstatutory, obviousness-type double patenting over claims 1-24 of United States patent no. 6,960,207. Applicants will submit an appropriate terminal disclaimer to overcome the double patenting rejection upon receiving an indication of allowable subject matter.

### **Withdrawn Claims**

Claims 3, 4, 10, and 13 were withdrawn in response to a restriction requirement. Claims 3 and 4 depend from, and are allowable for at least the same reasons as, claim 1. Claims 10 and 13 depend from, and are allowable for at least the same reasons as, claim 8. In light of the allowance of generic claims 1 and 8, Applicants respectfully request that the Examiner consider and indicate the allowability of the withdrawn claims. If the Examiner believes that an amendment is necessary to consider and allow the withdrawn claims, the Examiner is requested to contact the undersigned.

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**CONCLUSION**

In view of the foregoing remarks, Applicants respectfully submit that the application is in condition for allowance, and request that all rejections be withdrawn, that all pending claims be allowed, and that the application be passed to issue. If, for any reason, the Examiner finds the application to be in other than condition for allowance, the Examiner is invited to contact the undersigned in an effort to resolve any matter still outstanding before issuing another action.

Applicants have provided for a one month extension of time herewith. Should a further extension of time be deemed necessary for this paper to be considered timely, Applicants hereby petition therefor under 37 C.F.R. § 1.136.

No fee is believed due for the net addition of claims herein. Authorization is hereby granted to charge any fees due with the filing of this document, including any fees for any further extensions of time deemed necessary, to Deposit Account No. 50-1129 with reference to Attorney Docket No. 0B-044301US/82410-0014.

Respectfully submitted,

**WILEY REIN LLP**

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